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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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JOHNNY ROBERT BACA,

Plaintiff,

*versus*

A. TOMPKINS, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:11-CV-502

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Johnny Robert Baca, a prisoner confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against A. Tompkins, V. Davis, V. Breaux, and T. Bassetts.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the complaint without prejudice pursuant to 28 U.S.C. § 1915(e) for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Plaintiff filed objections to the magistrate judge's Report and Recommendation.


The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. Plaintiff did not exhaust administrative remedies until after he

filed this action. Because he was required to exhaust remedies before filing a civil rights action, he has failed to state a claim upon which relief may be granted. *Carbe v. Lappin*, 492 F.3d 325, 328 (5th Cir. 2007).

### **ORDER**

Accordingly, plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 23rd day of April, 2012.

A handwritten signature in cursive script that reads "Marcia A. Crone".

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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE